Parnell, at pages 64 and 65 are in point. As also is an observation of Wills J. in the *King* v. *Parke* (1903) 2 K.B. 441 at page 441 where he says that procedure in matters pending on the civil side 'would afford no assistance in the present discussion'. By this he must clearly be taken to have meant that contempt of court falls on the criminal side of the jurisdiction."

In *Public Prosecutor* v. *Lee Ah Keh & Ors.*[4] Ali J., as he then was, recognized that contempt of court is a criminal offence, certainly if committed in the face of the court. He cited with approval at page 23 the headnote to *In re Pollard*[5] which reads in part as follows:

"A contempt of court being a criminal offence. . . ."

This is not to say however that all contempts are criminal, for, as stated by Halsbury's Laws of England, 4th edition, paragraph 2:

"Contempt of court may be classified either as (1) criminal contempt, consisting of words or acts obstructing, or tending to obstruct or interfere with, the administration of justice or (2) contempt in procedure, otherwise known as civil contempt, consisting of disobedience to the judgments, orders or other process of the court, and involving a private injury."

The alleged contempt here is clearly of the first and not of the second kind.

The fact that the application here was made under Order 52 of the Rules of the High Court, 1980, and that if committed the respondents would be kept in a civil prison at the expense not of Government but of the applicant does not in our judgment make any difference.

As there is no appeal beyond the court, this application is dismissed with costs.

Application dismissed.

Solicitors: Karpal Singh & Co.

KON THEAN SOONG v. TAN ENG NAM

[F.C. (Lee Hun Hoe C.J. (Borneo), Wan Suleiman Ag. C.J. (Malaya) & Abdul Hamid F.J.) December 3, 1981 & February 20, 1982]

[Kuala Lumpur — Federal Court Civil Appeal No. 164 of 1979]

Partnership — Retirement of partner — Whether rights and interests of retiring partner sold to the other partner — Whether agreement enforceable — Payment of interest — Civil Law Act, 1956, s. 5(1) — Contracts (Malay States) Ordinance, 1950.

English Law — Whether English Law of partnership applicable — Contracts (Malay States) Ordinance, 1950 — Civil Law Act, 1956, s. 5(1).

In this case the parties were partners in a business. On September 30, 1969 the respondent retired from the business and the business became a sole proprietorship with the appellant as sole proprietor. It was also agreed that the appellant should pay for the respondent's rights and interests in the partnership on the basis of the appellant's sole proprietorship in the business as at March 31, 1970. The respondent claimed the sum due from the appellant and judgment was given in his favour in the High Court. The appellant appealed.

Held: (1) the law applicable in this case was the Contracts (Malay States) Ordinance, 1950. Notwithstanding Section 5(1) of the Civil Law Act, 1956, the English law of partnership will not apply, even if the Contracts Ordinance, 1950, is silent on the issues in dispute;

(2) in this case the learned judge was right in holding that the intention of the parties was clearly expressed in the second recital to the agreement where it was stated that the plaintiff-respondent was desirous of withdrawing from the partnership and to sell his rights and shares in the partnership to the defendant-appellant;

(3) the learned judge was also right in holding that the buying price which the appellant had to pay to the respondent, was based on the financial standing of the appellant's sole proprietorship in the business as at March 31, 1970 and not as on the date of the respondent's retirement on September 31, 1969;

(4) as the appellant in this case had the use of the respondent's share of the money to which the respondent was entitled from April 1, 1970, the learned judge was correct in ordering that interest should be payable from that day.

Cases referred to:-

(1) *Newington Local Board* v. *Cottingham Local Board* (1879) 12 Ch. D. 725.

(2) *Tan Mooi Liang* v. *Lim Soon Seng* [1974] 2 M.L.J. 60.

(3) *Addanki Narayanappa & Anor.* v. *Bhaskara Krishnappa* A.I.R. 1966 S.C. 1300, 1304.

(4) *Forbes* v. *Git & Ors.* [1922] 1 A.C. 256.

FEDERAL COURT.

R.R. Sethu for the appellant.

Khoo Eng Chin for the respondent.

Cur. Adv. Vult.

Wan Suleiman Ag. C.J. (Malaya) (delivering the judgment of the Court): When we dismissed this appeal we undertook to give our reasons in due course. Our grounds are set out hereunder.

The respondent's claim is based on a written agreement Exhibit P1 executed by the parties on September 25, 1969. The agreement is entitled "Agreement of Retirement of a Partner", and before us as it was in the court below the construction of this document is the deciding factor. The facts of this action are not in dispute, and at the trial both parties elected not to call any witness.

The facts are clearly set out in the judgment of the learned trial judge. The parties were partners in a business known as the Times Educational Company from January 1, 1964. On September 30, 1969 the respondent retired from the business. Since the partnership business was registered under the Registration of Business Ordinance 1956, the parties executed Business Registration Form B, whereunder the respondent withdrew from the partnership as from the date of execution i.e. September 30, 1969, and the business became a sole proprietorship business with appellant as the sole proprietor (see Exhibits AB1 and AB2).

At the trial there were two agreed issues:—

(1) Whether on the construction of the Agreement (Exhibit P1), the respondent had retired from the partnership *and sold his rights and interests therein to the appellant* OR whether the respondent retired *simpliciter* from the partnership; (the emphasis is ours).

(2) If the respondent had retired from the partnership and sold his rights and interests therein to the appellant, is such an agreement enforceable?

It was common ground that the statute applicable in this case is the Contracts (Malay States) Ordinance 1950 (see *Newington Local Board* v. *Cottingham Local Board*[1]), and the Federal Court decision in *Tan Mooi Liang* v. *Lim Soon Seng*[2] is good authority for the proposition, as his Lordship held, that notwithstanding section 5(1) of the Civil Law Act 1956, the English Law of Partnership will not apply, even if the Contracts Ordinance 1950 is silent on the issues in dispute.

Construing the agreement on the principle of the intention of the parties thereto, the learned trial judge held that in consideration of giving him sole proprietorship of the business, the appellant had agreed to buy the respondent's rights and shares in the partnership, and the latter agreed to retire. He held that there was no conflict between the recital to the agreement and the operative parts.

On the second issue, his Lordship held that the agreement of sale was enforceable. Since respondent had kept his part of the bargain, the learned judge held that he is contractually entitled to enforce appellant's part of the bargain contained in Clauses (2) and (3) of the agreement.

In the result he gave judgment to the respondent as prayed in prayers (1), (2), (3) as amended, (5) and (6) of the statement of claim, and also ordered Messrs. Peat, Marwick, Mitchell & Co. of Kuala Lumpur to continue as accountants for the purpose of prayer (1) until further order with liberty to appellant to falsify and surcharge the accounts.

Before us Mr. Sethu for the appellant again conceded that the partnership is a partnership at will, that the law applicable is the Contracts (Malay States) Ordinance 1950, and that the English partnership laws do not apply.

We were referred to an Indian Supreme Court decision *Addanki Narayanappa & Anor.* v. *Bhaskara Krishnappa,*[3] at page 1304 where the following passage appears:

"As already stated his right during the subsistence of the partnership is to get his share of the profits from time to time as may be agreed upon among the partners and after the dissolution of the partnership or with his retirement from the partnership of the value of his share in the net partnership assets *as on the date of the dissolution or retirement* after a deduction of liabilities and prior charges."

It was indicated to us that the Indian Act like the English Act has provision for sale of a share in a partnership whereas our Contracts (Malay States) Ordinance 1950 has no such provision. This same objection was raised without success in the court below. At pages 46/47 of his judgment, the learned trial judge has this to say about the present case,

"... by the Agreement Exhibit P1, the parties did not only agree that the plaintiff should retire and thereby dissolving the partnership on September 30, 1969, but they also agree that the business of the partnership should continue and that the defendant should be the sole proprietor of Times Educational Company and, for this, the defendant should pay the plaintiff in accordance with Clause 2 and Clause 3 of the Agreement, i.e. on the basis of the financial standing of the defendant's sole proprietorship as at March 31, 1970."

Referring to the Agreement Mr. Sethu says that Clause 2 is independent of Clause 1. He adds that the operative part of the agreement is important and that where there is conflict, as he submits there is, in this instance, between the two clauses, then the 1st clause would prevail. (See *Forbes* v. *Git & Ors.*[4]).

On this point we are in complete agreement with the learned trial judge's view of the agreement contained in the following passage in his grounds of judgment.

"The intention of the parties is clearly expressed in the second recital to the agreement, where it is stated that the plaintiff is desirous of withdrawing from the partnership *and* to sell his rights and shares in the partnership to the defendant. There is no conflict between the recital and operative parts. Clause (1) contains the plaintiff's obligation and it refers to the plaintiff's withdrawal from partnership in the first part of the second recital. Clause 2 and Clause 3 set out the price or consideration for the sale as intended in the second half of the second recital. By these two clauses, it is also clear that the buying price which the defendant has to pay to the plaintiff, is based on the financial standing of the defendant's sole proprietorship in the business as at March 31, 1970, and not as on the date of plaintiff's retirement on September 30, 1969."

With regard to the interest awarded in the court below under prayer (1), appellant complains that the obligation to pay only arises upon ascertaining the amount due after taking of accounts, so that interest should only become payable after that date. We take the view that appellant had the use of respondent's share of the money to which he was entitled from April 1, 1970, and that that should be, as the trial judge ordered, the day from which interest should be payable.

We therefore dismissed the appeal with costs and ordered that appellant's deposit be paid to the respondent to account of taxed costs.

Appeal dismissed.

Solicitors: *Azman, Davidson & Co.; Chew & Co.*

LEE POH CHOO v. S.E.A. HOUSING CORPORATION SDN. BHD.

[O.C.J. (Mohamed Dzaiddin J.C.) March 24, 1981]

[Kuala Lumpur — Civil Suit No. 2962 of 1967]

Contract — Building Contract — Building not completed within eighteen months after date of contract — Breach of statutory rules — Damages — Set-off — Housing Developers (Control and Licensing) Rules, 1970, rr. 12 & 13 — Housing Developers (Control and Licensing) Act, 1966, s. 24.

Housing Developers — Building completion delayed — Whether circumstances beyond control.

In this case the plaintiff sued for damages for breach of contract and for delivery of documents of title relating to land and house in Petaling Jaya. The plaintiff had agreed to purchase the property from the defendant and it was a term of the agreement that the building on the said property should be completed within a period of eighteen months from the date of the agreement. The building was only completed some twenty three months after that date. The defendants claimed that the non-fulfilment was caused by circumstances beyond their control. The issues in dispute between the parties were as follows:—

1. Do the Housing Developers (Control & Licensing) Act 1966 and 1970 Rules apply to this case. If they do, can the defendants contract out of the Act and the Rules?
2. What is the position of the defendants under the Common Law?
3. Can the plaintiff set off the last payment of the purchase price against liquidated damages?